

1 MORGAN, LEWIS & BOCKIUS LLP
2 HOWARD HOLDERNESS, State Bar No. 169814
3 DENNIS J. SINCLITICO, JR., State Bar No. 240260
One Market, Spear Street Tower
3 San Francisco, CA 94105-1126
Tel: 415.442.1000
4 Fax: 415.442.1001
E-mail: dsinclitico@morganlewis.com

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6 Attorneys for Defendants
Cisco Systems, Inc., Venu Dharmapuri, and Kenny
Paul
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11
12 ANOOP RAJKUMAR,

Case No. C08-01600-PVT

13 Plaintiff,
14 vs.
15 CISCO SYSTEMS, INC., VENU
DHARMAPURI, and KENNY PAUL, et
al.,
16

**DEFENDANTS CISCO SYSTEMS, INC.,
VENU DHARMAPURI, AND KENNY
PAUL'S NOTICE OF MOTION AND
MOTION TO DISMISS AND,
ALTERNATIVELY, MOTION FOR A
MORE DEFINITE STATEMENT**

17 Defendants.
18

Hearing Information
Date: August 5, 2008
Time: 10:00 a.m.
Place: Courtroom 5

19
20 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

21 YOU ARE HEREBY GIVEN NOTICE that on August 5, 2008, at 10:00 a.m., at 408
22 South 1st St., San Jose, California, in Courtroom 5, Defendants Cisco Systems, Inc., Venu
23 Dharmapuri, and Kenny Paul ("Cisco Defendants"), by and through their undersigned counsel,
24 will, and hereby do, move to dismiss this action, pursuant to Federal Rule of Civil Procedure
25 12(b)(6). Alternatively, the Cisco Defendants will, and hereby do, move to for a more definite
26 statement of the Complaint, pursuant to Federal Rule of Civil Procedure 12(e).

27 Dismissal is required here because (1) the Complaint fails to state facts sufficient to
28 support any claim for relief alleged by Plaintiff against the Cisco Defendants. Alternatively, a

1 more definite statement is required because, as worded, the Complaint is so vague so as to make it
 2 impossible for the Cisco Defendants to frame a responsive pleading.

3 This motion is based on this Notice of Motion and the Memorandum of Points and
 4 Authorities submitted herewith, all of the papers on file with this Court, and any oral argument
 5 that this Court may hear.

6 **ISSUES TO BE DECIDED [N.D. L.R. 7-4(a)(3)]**

- 7 1. Has Plaintiff pled facts sufficient to support a claim for a violation of 18 U.S.C. §
 8 2510 *et seq.* against the Cisco Defendants?
- 9 2. Has Plaintiff pled facts sufficient to support a claim for "invasion of privacy"
 10 against the Cisco Defendants?
- 11 3. Has Plaintiff pled facts sufficient to support a claim for intentional infliction of
 12 emotional distress against the Cisco Defendants?
- 13 4. Has Plaintiff pled facts sufficient to support a claim for trespass against the Cisco
 14 Defendants?
- 15 5. Has Plaintiff pled facts sufficient to support a claim for defamation against the
 16 Cisco Defendants?
- 17 6. Has Plaintiff pled facts sufficient to support a claim for "job loss" against the
 18 Cisco Defendants?
- 19 7. Has Plaintiff pled any of his alleged claims such that the Cisco Defendants have a
 20 sufficient basis for framing a responsive pleading?

21 Dated: June 18, 2008

MORGAN, LEWIS & BOCKIUS LLP

22 By 
 23 Dennis J. Sincitico, Jr.

24
 25 Attorneys for Defendants
 26 Cisco Systems, Inc., Venu Dharmapuri,
 27 and Kenny Paul

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Anoop Rajkumar has sued Defendants Cisco Systems, Inc. (“Cisco”), Kenny Paul, and Venu Dharmapuri (collectively, “Cisco Defendants”) and alleged that each participated in a scheme to watch him, to tap his electronic communications and to record secretly his oral conversations. While the Complaint offers no motive for such activities, Cisco Defendants are alleged to have begun their spying in October 2004, while Mr. Rajkumar worked at Cisco, and continued that spying through 2007, two years after Mr. Rajkumar left Cisco. What “spying” precisely happened during this almost three year period is, however, not made clear in the Complaint, and it is this vagueness regarding core allegations that renders the Complaint impermissibly flawed.

12 Claims for relief cannot be based Plaintiff's conclusory statements concerning the Cisco
13 Defendants' liability without allegations that demonstrate the nature, source and extent of his
14 alleged claims. Without additional factual allegations, the Complaint fails to satisfy well-
15 established pleading requirements and cannot withstand a motion to dismiss. Moreover, the
16 Complaint is so lacking in factual specificity that a proper response is impossible. Accordingly,
17 and alternatively, Cisco Defendants are entitled to a more definite statement of the Complaint.

II. STATEMENT OF FACTS

Cisco is a worldwide leader in networking products for the Internet. Mr. Paul and Mr. Dharmpuri are current employees of Cisco in San Jose, California. Plaintiff is a former Cisco employee who left the company in 2005. On March 24, 2008, Plaintiff filed the instant Complaint against the Cisco Defendants alleging violations of the federal wiretapping statute and apparently related claims for trespass, intentional infliction of emotional distress, defamation, and "job loss." The Cisco Defendants were served with the Complaint on May 29, 2008. Mr. Paul, Mr. Dharmapuri and Cisco have consented to joint representation.

1 **III. ARGUMENT**

2 **A. Plaintiff Has Not Met the Legal Standard Applicable To Motion to Dismiss**
 3 **Pursuant To FRCP 12(b)(6).**

4 Dismissal under Rule 12(b)(6) is appropriate where the complaint fails to allege facts
 5 sufficient to support a cognizable legal theory that might entitle a plaintiff to relief. *Balistreri v.*
 6 *Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). The “purpose of [the Rule] is to enable
 7 defendants to challenge the legal sufficiency of complaints without subjecting themselves to
 8 discovery.” *Rutman Wine Co. v. E & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987).

9 The Supreme Court’s recent decision in *Bell Atlantic v. Twombly* clarified the applicable
 10 standard for determining whether a complaint contains facts sufficient to survive a motion to
 11 dismiss. ____ U.S. ___, 127 S. Ct. 1955 (2007). The Court noted that while a complaint does not
 12 need “detailed” factual allegations, a “plaintiff’s obligation to provide the ‘grounds’ of his
 13 ‘entitle[ment]’ to relief requires more than labels and conclusions, and a formulaic recitation of a
 14 cause of action’s elements will not do.” *Id.* at 1964-65 (quoting *Papsan v. Allain*, 478 U.S. 265,
 15 268 (1986)). Simply put, a complaint must contain a “statement of circumstances, occurrences,
 16 and events in support of the claim presented.” *Id.* at 1965, n. 3.

17 As set forth in detail below, Plaintiff’s conclusory allegations fail to satisfy the pleading
 18 standard set forth in *Twombly*.

19 1. **Plaintiff Has Failed to Allege Facts Sufficient to State a Claim for**
 20 **Violation of the Wiretap Act.**

21 Plaintiff’s First Claim alleges that the Cisco Defendants violated 18 U.S.C. § 2510 *et*
 22 *seq.* (“Wiretap Act”). A complaint which alleges a violation of the Wiretap Act is subject to the
 23 pleading requirements of Rule 12(b)(6). *Housley v. U.S.*, 35 F.3d 400, 401 (9th Cir. 1994). Thus,
 24 in order to state a claim for relief under the Act, a plaintiff must make factual allegations that
 25 defendant (1) intercepted, endeavored to intercept or procured any other person to intercept or
 26 endeavor to intercept, (2) any wire, oral, or electronic communication, and (3) did so
 27 intentionally. 18 U.S.C. § 2511(1)(c).

28 Here, however, the only allegations against these Cisco Defendants are the following:

1 Beginning in approximately October 2004 and continuing through
 2 (sic) June, 2005 and thereafter, defendants Cisco, Venu
 3 Dharmapuri, Kenny Paul...intercepted without authorization,
 4 plaintiff's oral, wire, and/or electronic communications to be
 recorded and published to third parties, including his work
 place.[...]

5 Defendant Wipro and its agents and Cisco put audio and video
 6 surveillance devices between March 2007 and July 2007 during
 Plaintiffs (sic) stay in Santa Clara County.”¹

7 Complaint at ¶¶ 15, 18.

8 In *Twombly*, the Court held that, in an antitrust case, “an allegation of parallel conduct and
 9 a bare assertion of conspiracy [did] not suffice” to sufficiently plead a violation of the Sherman
 10 Act. 127 S. Ct. at 1966. Here, Plaintiff’s conclusory allegations are precisely the type of
 11 “formulaic recitation of a cause of action’s elements” that the Court in *Twombly* held “will not
 12 do.” *Id.* These allegations do not apprise the Cisco Defendants of the specific communications
 13 that were allegedly intercepted, the method by which these communications were allegedly
 14 intercepted, nor the means or content of any publication.

15 The Complaint’s lack of specificity is particularly problematic given that Mr. Rajkumar is
 16 a former Cisco employee and claims that some of the allegedly wrongful conduct occurred at “his
 17 work place.” Complaint at ¶ 15. If, for example, the gravamen of the Complaint is that Cisco
 18 Defendants monitored e-mail Plaintiff sent and received while at work or that Cisco Defendants
 19 “intercepted” stored communications (*e.g.*, voicemail), no claim would lie. *See Konop v.*
Hawaiian Airlines, Inc., 302 F.3d 868, 876-77 (9th Cir. 2002) (no violation of the Wiretap Act
 20 predicated on stored, voicemail communication). Though a plaintiff is not required to set forth
 21 each and every factual allegation that his claims are predicated upon, he must, at least, provide the
 22 “grounds” upon which his claims rest. *Twombly*, 127 S. Ct. at 1964-65. Plaintiff has failed to do
 23 so here. Accordingly, this First Claim should be dismissed.
 24

25
 26
 27 ¹ Though Plaintiff alleges that each of the Cisco Defendants was the agent, servant, employee, business
 28 partner and/or involved in a joint venture with all other defendants, it is unclear whether Paragraphs 16
 and 17 of the Complaint impute that alleged misconduct to the Cisco Defendants.

1 2. **Plaintiff Has Failed to Allege Facts Sufficient to State His Second**
 2 **Claim for Invasion of Privacy.**

3 Plaintiff's Second Claim alleges "Invasion of Privacy" against the Cisco Defendants. In
 4 support of this claim, Plaintiff re-alleges Paragraphs 15 and 18 above and also adds the following:

5 Cisco got Plaintiff followed starting July 2005 to till date (sic) to
 6 know about his whereabouts and to find out whom Plaintiff meets.
 7 This information was used by them for not only discussing
 8 plaintiff's personal/professional life with Plaintiff's friends and
 9 family members but also using them (family/friends/co-workers)
 10 for questioning Plaintiff for his future plan of action. Places where
 Plaintiff goes regularly goes like Car Rental/Coffee shop/FedEx
 Kinko's/ Temple (place of worship) were used to do not only
 illegal surveillance but in a way harassing plaintiff so that he does
 not go to those places.

11 Complaint at ¶ 21.

12 There is no federal statute cited by Plaintiff in support of this claim for relief, so the Cisco
 13 Defendants assume that it is an attempt to assert a state law claim. California, however, does not
 14 recognize a cause of action for "invasion of privacy." Instead, invasion of privacy is parsed into
 15 four distinct torts: intrusion upon seclusion, public disclosure of private facts, false light, and
 16 appropriation. 4-46 *California Torts*, Matthew Bender & Co., § 46.01 (2008). None of these
 17 theories are, however, supported by the factual allegations made in the Complaint.

18 a. **Plaintiff has failed to allege facts sufficient to state a claim for**
 19 **intrusion upon seclusion.**

20 An action for intrusion has two elements (1) intrusion into a private place, conversation, or
 21 matter (2) in a manner highly offensive to a reasonable person. *Shulman v. Group W Prods.*, 18
 22 Cal. 4th 200, 231 (1998). "To prove actionable intrusion, the plaintiff must show the defendant
 23 penetrated some zone of objectively reasonable expectation of seclusion or solitude in the place,
 24 conversation or data source in question." *Id.*

25 The Complaint does not allege facts that support this necessary element of a claim for
 26 intrusion. Indeed, the facts alleged in Paragraph 21 suggest that Cisco Defendants "followed"
 27 Plaintiff to various public places to "know his whereabouts." There is no allegation of actual
 28 intrusion. Thus, even if true - and Cisco Defendants submit that all of the allegations are patently

1 false - the acts alleged in Paragraph 21 cannot support a cause of action for intrusion upon
 2 seclusion.

3 Plaintiff also attempts to support this cause of action by alleging that these various public
 4 "places...were used to do...illegal surveillance" and by incorporating the allegations of
 5 Paragraphs 15-18. Complaint at ¶ 21. For the same reasons set forth in Section 1 above, these
 6 factual allegations do not satisfy the pleading requirement described in *Twombly*.

7 b. **Plaintiff has failed to allege facts sufficient to state a claim for**
 8 **public disclosure of private facts.**

9 In order to adequately plead a claim for public disclosure of private facts, a plaintiff must
 10 demonstrate: (1) a public disclosure, (2) that the disclosure concerned private facts, (3) that the
 11 disclosure be one that would be offensive and objectionable to a reasonable person of ordinary
 12 sensibilities, and (4) that the disclosure not be of legitimate public concern. *Shulman*, 18 Cal. 4th
 13 at 214. The only allegation that pertains to disclosure of a potentially private fact is described in
 14 Paragraph 32 of the Complaint. These statements, however, are attributed to defendant Wipro
 15 and not to the Cisco Defendants. As such, the Complaint fails to state a claim for public
 16 disclosure of private facts against the Cisco Defendants.

17 c. **Plaintiff has failed to allege facts sufficient to state a claim for**
 18 **false light.**

19 In order to adequately plead a claim for false light, a plaintiff must demonstrate: (1) a
 20 public disclosure, (2) which places the plaintiff in a false light, and (3) is objectionable to a
 21 reasonable person. *Gill v. Curtis Publishing Co.*, 38 Cal. 2d 273, 280 (1952). As above, Plaintiff
 22 has not alleged that Cisco Defendants made any statements, false or otherwise, about him.
 23 Accordingly, no claim for false light can lie.

24 d. **Plaintiff has failed to allege facts sufficient to state a claim for**
 25 **appropriation of name and likeness.**

26 In order to adequately plead a claim for appropriation of name and likeness, a plaintiff
 27 must demonstrate: (1) the defendant's use of the plaintiff's name, likeness, or identity without the
 28 plaintiff's consent, (2) commercial or other advantage to the defendant, and (3) resulting in injury

1 to the plaintiff. *Eastwood v. Superior Court*, 149 Cal. App. 3d 409, 417 (1983). This claim
 2 generally arises when a defendant uses the name or likeness of a celebrity/public figure for their
 3 own commercial gain. *Id.* Here, Plaintiff has not alleged any of the elements of an appropriation
 4 claim.

5 As Plaintiff has not pled facts sufficient to support a colorable claim against the Cisco
 6 Defendants arising from any of the four invasion of privacy torts, Plaintiff's Second Claim for
 7 Relief should be dismissed.

8 **3. Plaintiff Has Failed to Allege Facts Sufficient to State His Third Claim
 9 for Intentional Infliction of Emotional Distress.**

10 Plaintiff's Third Claim is based on a theory of intentional infliction of emotional distress.
 11 The essential elements of a claim for intentional interference of emotional distress are (1)
 12 outrageous conduct by the defendant, (2) an intention to cause, or reckless disregard of the
 13 probability of causing, emotional distress, (3) the suffering of severe emotional distress by the
 14 defendant's outrageous conduct, and (4) actual and proximate causation of the plaintiff's
 15 emotional distress by the defendant's outrageous conduct. *Davidson v. City of Westminster*, 32
 16 Cal. 3d 197, 209 (1982). Plaintiff alleges the Cisco Defendants' purportedly outrageous conduct,
 17 if at all, only by way of repeating the allegations in Paragraphs 15 through 18 of the Complaint,
 18 of which, only Paragraphs 15 and 18 pertain to the Cisco Defendants.

19 As set forth above, a claim for relief based only on these vague and unsupported
 20 allegations does not satisfy Plaintiff's pleading obligations. No specific outrageous conduct by
 21 any of the Cisco Defendants is described in the Complaint, nor is there any hint regarding how
 22 Cisco Defendants may have intentionally caused or recklessly disregarded the potential of
 23 causing any emotional distress. Accordingly, the Third Claim for relief should be dismissed.

24 **4. Plaintiff Has Failed to Allege Facts Sufficient to State His Fifth Claim
 25 for Trespass.**

26 For the same reasons set forth above, Plaintiff's Fifth Claim² for trespass fails to
 27

28 ² Plaintiff's fourth claim is alleged against only defendants Deloitte and Wipro.

1 sufficiently plead facts which entitle him to relief. Trespass is the wrongful entry on real property
 2 in the occupation or possession of another. *Triscony v. Brandenstein*, 66 Cal. 514, 516 (1885). In
 3 support of this claim, Plaintiff realleged Paragraphs 16 through 18, of which, only Paragraph 18
 4 pertains to the Cisco Defendants. Paragraph 18 alleges that “Cisco put audio and video
 5 surveillance devices between March 2007 and July 2007 during Plaintiffs stay in Santa Clara
 6 County.”

7 The Complaint describes neither the property on which the alleged trespass occurred nor
 8 the nature of Plaintiff’s custody or control of that property. The Complaint also fails to describe
 9 the nature and circumstances of the trespass. The absence of these essential facts renders the
 10 claim defective. Accordingly, Plaintiff’s claim for relief based on trespass should be dismissed.³

11 **5. Plaintiff Has Failed to Allege Facts Sufficient to State His Sixth Claim
 12 for Defamation.**

13 The most fundamental element of a claim of defamation is a statement made by or
 14 attributable to defendant. *Cunningham v. Simpson*, 1 Cal. 3d 301, 307 (1969). Plaintiff’s Sixth
 15 Claim does not allege any statements, defamatory or otherwise, by any of the Cisco Defendants
 16 about Plaintiff. Paragraph 32 of the Complaint describes statements attributed to defendant
 17 Wipro but makes no mention of any statements made by the Cisco Defendants. The rest of the
 18 Complaint is silent as to statements made by or attributable to Cisco Defendants. Yet Paragraph
 19 33 imputes the statements allegedly made by defendant Wipro to “defendants, and each of them.”
 20 To the extent Plaintiff intended this claim to lie against the Cisco Defendants, it should be
 21 dismissed on the ground that it fails to describe a single statement attributable to any of them.

22 **6. Plaintiff Cannot Allege a Claim for “Job Loss.”**

23 Plaintiff’s final claim alleges “job loss.” This appears to be an element of damages, rather
 24 than a distinct claim. A review of case law, federal and California statutes, and practice guides
 25 has revealed no claim or cause of action for “job loss.” Accordingly, the Court should dismiss

26
 27 ³ Moreover, it is unclear whether this cause of action is alleged against defendants Paul and Dharmapuri.
 28 The only fact Plaintiff offers in support of this claim, Paragraph 18, does not allege any actions by Mr.
 Paul or Mr. Dharmapuri.

1 this purported claim as there is no legal theory to support it.

2 **B. In the Alternative, this Court Should Rule that a More Definite Statement**
 3 **Pursuant to FRCP 12(e) is Appropriate.**

4 “A party may move for a more definite statement of a pleading to which a responsive
 5 pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare
 6 a response.” Fed. R. Civil Proc. 12(e). “The proper test in evaluating a motion under Rule 12(e)
 7 is whether the complaint provides the defendant with a sufficient basis to frame his responsive
 8 pleadings.” *Cellars v. Pacific Coast Packaging, Inc.*, 189 F.R.D. 575, 578 (N. D. Ca. 1999). A
 9 more definite statement is particularly appropriate where a complaint fails to notify a defendant
 10 which allegations are directed at it, as opposed to other parties. *McHenry v. Renne*, 84 F.3d 1172,
 11 1175 (9th Cir. 1996).

12 Paragraphs 15, 17, 18, 21, 28, and 31 contain factual allegations related to alleged conduct
 13 by Cisco Defendants. These allegations are so lacking in specificity so as to make it nearly
 14 impossible to frame a responsive pleading. For example, Paragraph 28 states: “The actions of
 15 defendants alleged above constituted an unlawful trespass onto plaintiff’s residence and private
 16 property.” The Complaint provides no indication as to who is alleged to have committed the
 17 trespass, where it occurred, Plaintiff’s ownership interest in the property where the trespass
 18 occurred, or when it occurred. Cisco Defendants can hardly be expected to respond to this
 19 allegation without further detail. The other allegations are similarly lacking in content, and it is
 20 impossible to discern with any precision at all what the Cisco Defendants did wrong.
 21 Accordingly, if the Court is not inclined to dismiss the complaint pursuant Rule 12(b)(6), the
 22 Cisco Defendants respectfully request that the Court order Plaintiff to provide a more definite
 23 statement of the Complaint.

24 **IV. CONCLUSION**

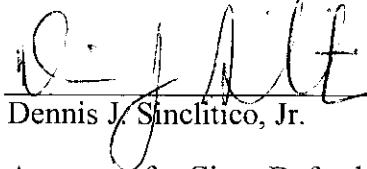
25 For each of the reasons set forth herein, Defendants Cisco Systems, Inc., Kenny Paul, and
 26 Venu Dharmapuri respectfully request an order dismissing Plaintiff’s Complaint as to each of
 27 them.

28 Alternatively, Cisco Defendants request an order requiring Plaintiff to provide a more

1 definite statement of his claims pursuant to Federal Rule of Civil Procedure 12(e).

2 Dated: June 18, 2008

3 MORGAN, LEWIS & BOCKIUS LLP

4 By 

5 Dennis J. Sinclitico, Jr.

6 Attorneys for Cisco Defendants
7 Cisco Systems, Inc., Venu Dharmapuri,
and Kenny Paul

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PROOF OF SERVICE

Anoop Rajkumar v. Cisco Systems, Inc., et al.
 U.S. District Court – Northern District (San Jose Division)
 Case No. C08-01600-PVT

I, Paula Lesure, declare: I am and was at the time of the service mentioned in this declaration, employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this cause. My business address is Morgan, Lewis & Bockius LLP, Spear Street Tower, One Market, San Francisco, California 94105.

On June 18, 2008, I served a copy(ies) of the following document(s):

DEFENDANTS CISCO SYSTEMS, INC., VENU DHARAMPURI, AND KENNY PAUL'S NOTICE OF MOTION AND MOTION TO DISMISS AND, ALTERNATIVELY, MOTION FOR A MORE DEFINITE STATEMENT

by placing them in a sealed envelope(s) addressed as follows:

Anoop Rajkumar 73 Park Drive, Suite 16 Boston, MA 02215 Tel: (650) 331-7324	Email: anooprakumar@hotmail.com
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- (BY FEDERAL EXPRESS)** I placed the sealed envelope(s) or package(s) designated by the Federal Express service carrier for collection and overnight delivery by following the ordinary business practices of Morgan Lewis & Bockius LLP, San Francisco, California. I am readily familiar with Morgan Lewis & Bockius LLP's practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery the same day as the correspondence is placed for collection
- (BY ELECTRONIC MAIL)** Addressed to the recipient(s) as listed above.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct, and that this declaration was executed on June 18, 2008, at San Francisco, California.



Paula Lesure